

REMARKS

Reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks is respectfully requested.

The Examiner notes in the Office Action that Applicants have not filed a certified priority copy of the JP 2001-130189 application as required by 35 U.S. C. 119(b). Attached to this Amendment is the certified priority document of Application No. JP 2001-130189 filed April 26, 2001.

Claim 4 is objected to as being in improper form. Claim 4 has been amended and is in proper form. Accordingly, the objection should be withdrawn.

Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson (US 6,064,985), and further in view of Thomas (US 3,865,380). In response, claim 1 has been amended to clarify the differences between claim 1 and this combination of references as discussed below.

To further clarify the differences between claim 1 and Anderson and Thomas, claim 1 is amended as follows:

Claim 1 (page 3, last line of the Preliminary Amendment) "...and then storing and..." an inputting error) is amended to "... and ~~then storing~~ stores and..."

Claim 1 (page 5, line 9 of the Preliminary Amendment) "an analytical matrix, in which are plotted targets of evaluation..." is amended to "~~an~~ a first analytical matrix, in which are plotted said targets of evaluation..."

This amendment has been made to make it clear that a "target of evaluation" corresponds to "a specific brand, product, or store that is the target of evaluation", as set forth on lines 13 and 17 of page 4 of the Preliminary Amendment.

Claim 1 (page 6, lines 9-10 of the Preliminary Amendment) "an analytical matrix, in which the sales-improvement ratios of the targets of..." is amended to "~~an~~ a second analytical matrix, in which the sales-improvement ratios of ~~the~~ said targets of..."

These changes are made so that "an analytical matrix" can be distinguished as either "a first analytical matrix" or "a second analytical matrix".

The limitations of claim 1 of the present application as amended now are discussed in the

following paragraphs.

A customer-equity evaluation means (12c) in claim 1 of the present application comprises the following elements (1) through (6):

- (1) a total-customer-equity tabulating means
- (2) an average-customer-equity tabulating means
- (3) a first analytical matrix plotted target of evaluation [the axes represent the purchase amount per customer based on the means (2) and the total number of customers based on the means (1)]
- (4) a means of tabulating the customer-stability ratio
- (5) a customer growth-ratio tabulating means, and
- (6) a second analytical matrix plotted target of evaluation [the axes represent the customer-stability ratio based on the means (4) and the customer-asset growth ratio based on the means (5)].

The characteristics of the present invention lie in the analytical matrices, namely, the above-mentioned elements (3) and (6) of the means 12c.

Figures 4 and 5 in the specification of the present application show embodiments of the above-mentioned elements (3) and (6).

The first analytical matrix, shown in Figure 4, is an analytical diagram in which records for each store are plotted, and wherein the vertical axis represents the purchase amount per customer as tabulated and recorded by the average-customer-equity tabulating means (2), and wherein the horizontal axis represents the total number of customers as tabulated and recorded by the total-customer-equity tabulating means (1). (See page 3, paragraph 0041 of U.S. Patent Application Publication No. 2004/0088185A1 of the present application.)

Because this analytical diagram is plotted according to the sales rank of each store, it has the effect that a user can objectively analyze whether each store's policy or each store's sales-promotion policy is appropriate. (See page 3, paragraph 0042 of the aforementioned publication.) However, the second analytical matrix, shown in Figure 5, is an analytical diagram in which records for each store are plotted, and wherein the horizontal axis represents ratio of retained customers as tabulated and recorded by the means of tabulating the customer-stability ratio (3), and the vertical axis represents the customer-equity growth ratio as tabulated and recorded by the customer-equity growth-ratio tabulating means (4). (See page 3, paragraphs 0043 and 0044 of the aforementioned publication.)

The present invention has such an effect that a user, by seeing where each store is plotted in this analytical diagram, or by making comparisons with an improved store, can objectively analyze a policy (an improvement plan) of a store. (See page 3, paragraphs 0045 and 0046, and page 4, paragraphs 0047 through 0049 of the aforementioned publication.)

In conclusion, Applicants submit that even if Anderson with Thomas were combined, that the invention recited in claim 1 would not be obtained because elements (3) and (6) of the customer-equity evaluation means of claim 1 in the above-mentioned effects related to the elements (3) and (6) of the means 12c are not described at all in the specifications of Anderson and Thomas.

Further, the Examiner is applying an *ipsissimis verbis* test. An *ipsissimis verbis* test requires the same terminology in the prior art in order to find anticipation. Akzo N.V. v. U.S. International Trade Com., 808 F.2d 1471; 1986 U.S. App. LEXIS 20737; 1 U.S.P.Q.2d (BNA) 1241 (Fed. Cir. 1987) cert. denied, 482 U.S. 909, 96 L.Ed.2d 382, 107 S. Ct. 2490 (1987). Just because the present invention uses the term equity for customer equity does not mean that the present invention is related to equity in the stock market.

Further, Applicants contend that Anderson, Thomas and Horowitz et al. are from non-analogous arts. "The determination that a reference is from a non-analogous art is therefore two-fold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved." In re Wood, 599 F.2d 1032, 1036 (CCPA 1979). Inventions directed to stocks are not in the field of the inventor's endeavor in the present invention. Nor is the reference reasonably pertinent to the particular problem with which the inventor was involved. Stocks are not related to determining how much customers are worth.

Further, the limitations recited in claim 1 are not met by Anderson. For example, the Examiner contends that the customer-equity sorting means are met in column 13, lines 33-38 of Anderson. In the present application, customer-equity performs the following functions:

"(1) sorting purchase records for a specific brand, product, or stores (that is the target of evaluation) into specific customer classifications; determining the periods and frequency of purchases within an evaluating period divided into prescribed time periods in which repeated purchases or store visits can be expected for the aforementioned specific brand, product, or store; (2) classifying customers in three categories, including repeat customers who have made purchases in the previous and current evaluation periods; ex-customers who have discontinued purchasing; and new customers

who have begun purchasing in the current evaluation period; and (3) recording the classification codes for these customers in the master table of customers.”

Applicants therefore believe that claim 1 and its dependent claims 4 and 5 through 8 are patentable, and the obviousness rejection should be withdrawn.

Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson, in view of Thomas and further in view of Horowitz et al. (US 6,349,290). In response, claims 4 and 9 have been amended to clarify the differences between claims 4 and 9 and this combination of references. For at least the reasons discussed above with respect to claim 1, this rejection should be withdrawn.

Claim 9 of the present invention has been rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Thomas and Horowitz et al.

As described below, that even a combination of Anderson, Thomas, and Horowitz et al. is different from claim 9 of the present application. The characteristics of claim 9 of the present application lie in (A) “plotting the targets of evaluation and . . . tabulating means” [5th paragraph of claim 9], and (B) “classifying and ranking . . . tabulating means” [last paragraph of claim 9]. The characteristic (A) is a step of plotting the targets of evaluation of the company using the first analytical matrix. Figure 5 of the specification shows an embodiment where the targets of evaluation are stores of the company, and the records of each store of the company are plotted in the analytical diagram. (See page 3, paragraph 0041, of the aforementioned publication.)

The characteristic (B) is a step of plotting the targets of evaluation of the company in the above-mentioned second analytical matrix. Figure 5 of the specification shows an embodiment where the target of evaluation is a store of the company, and the records of each store of the company are plotted in the analytical diagram. (See page 3, paragraphs 0043 and 0044, of the aforementioned publication.)

The effects of the characteristics (A) and (B) are described, respectively, in paragraphs 0042, and 0044 through 0049 of the aforementioned publication.

The first and second matrices give such an effect that a user can objectively analyze a sales-promotion policy and an improvement policy of a store.

In conclusion, we believe that, even by combining Anderson, Thomas, and Horowitz et al., it is difficult to think out the constitutions of the characteristics (A) and (B) of the present

invention. Further, Anderson, Thomas and Horowitz et al. do not describe the effects of the present invention.

Thomas describes that stocks purchased by customers are tabulated (column 1, lines 59 and 60; column 13, lines 26 through 58; and Figure 1 of U.S. 3,865,380). However, even if Figure 10 of Thomas corresponds to the first analytical matrix of the present application, Figure 10 does not show a plot of targets of evaluation or a plot group of stores. We believe that, without such a plot group, a user cannot easily analyze an improvement policy of a store. Horowitz et al. describes a customer-retention ratio, etc. (column 16, line 68, to column 17, line 5, of U.S. 6,349,290B1). However, Horowitz et al. does not have a description that corresponds to the second analytical matrix of the present application. We believe that, even if the second analytical matrix is obvious for those skilled in the art, it is still difficult for them to further think out a plot of targets of evaluation or a plot group of stores, which are to be inside the second analytical matrix. Accordingly, this rejection should be withdrawn.

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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